

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

DANIEL B. O'FALLON,
Individually and on behalf of
All other similarly situated

PLAINTIFFS

VS.

CAUSE NO. 2:12-cv-65-KS-MTP

CREDIT SMART, L.L.C.

DEFENDANT

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, the Defendant, by and through undersigned counsel, and files this its Answer and Affirmative Defenses and would respectfully show unto the Court as follows:

1.

It is admitted that the Plaintiff is bringing this action under the Fair Debt Collection Practices Act. It is denied that there were violations of the Act.

2.

The allegations of paragraph 2 are denied.

3.

The allegations of paragraph 3 are admitted.

4.

The allegations of paragraph 4 are admitted.

5.

The allegations of paragraph 5 are admitted.

6.

The allegations of paragraph 6 are admitted.

7.

The allegations of paragraph 7 are admitted.

8.

The allegations of paragraph 8 are admitted.

9.

It is admitted that §15-1-29 of the Mississippi Code sets a three year statute of limitations.

The remaining allegations of paragraph 9 are denied.

10.

The allegations of paragraph 10 are denied.

11.

The allegations of paragraph 11 are denied.

12.

The allegations of paragraph 12 are denied.

13.

The Defendant would adopt all prior responses.

14.

The allegations of paragraph 14 are denied, including all subparts.

15.

It is denied that violation occurred or that the Plaintiff is requested to the relief requested.

16.

The allegations of paragraph 16 are denied.

17.

The allegations of paragraph 17 are denied.

18.

The allegations of paragraph 17 are denied.

19.

The allegations of paragraph 17 are denied.

20.

The allegations of paragraph 17 are denied.

21.

The allegations of paragraph 17 are denied.

22.

The allegations of paragraph 17 are denied.

23.

The allegations of paragraph 17 are denied.

24.

The allegations of paragraph 17 are denied.

The allegations of paragraph 24 are denied.

25.

The allegations of paragraph 17 are denied.

26.

The allegations of paragraph 17 are denied.

27.

The allegations of paragraph 17 are denied.

28.

The allegations of paragraph 17 are denied.

29.

The allegations of paragraph 17 are denied.

30.

The allegations of paragraph 17 are denied.

31.

The allegations of paragraph 17 are denied.

32.

The allegations of paragraph 17 are denied.

33.

The allegations of paragraph 17 are denied.

34.

The allegations of paragraph 17 are denied.

In response to that certain unnumbered paragraph beginning with the word “WHEREFORE” and ending with the words “just and proper”, the Defendant would deny that the Plaintiff is entitled to the requested relief.

AFFIRMATIVE DEFENSES

AND NOW, having answered the allegations of the Plaintiff’s Complaint, the Defendant would show unto the Court the following affirmative matters:

1.

The Plaintiff’s Complaint fails to state a cause of action.

2.

Service of process upon this Defendant is improper and/or inadequate.

3.

This Defendant is not subject to *in personam* jurisdiction.

4.

The Plaintiff has failed to mitigate his damages.

5.

The Plaintiff is not an appropriate class representative.

6.

That this matter is not appropriate for a class action due to the differing claim and the relatively small number of potential Plaintiffs.

7.

That the complaint of the Plaintiff is contradictory in its own terms, and no prior notice has been given to this Defendant so accordingly this Defendant reserves the right to raise any other affirmative defense which may be appropriate.

8.

The Defendant adopts all affirmative defenses of Rule 12 of the Federal Rules of Civil Procedure.

Respectfully submitted, this the 23rd day of July, 2012.

CREDIT SMART, L.L.C.

/s/ V. K. Smith, III

V. K. Smith, III (MSB # 7623)

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CERTIFICATE OF SERVICE

I, the undersigned attorney of record for Defendant, do hereby certify that I have this date filed via ECF a true and correct copy of the above and foregoing which sent notice to the following:

Harry V. Satterwhite
harry@satterwhitelaw.com
Attorney for Plaintiff

This the 23rd day of July, 2012.

V. K. Smith, III (MSB #7623)